

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	

**REPLY COMMENTS OF THE
NATIONAL HISPANIC MEDIA COALITION (“NHMC”)**

The National Hispanic Media Coalition (“NHMC”) respectfully submits these reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking seeking input on a number of proposals put forth to execute the authority granted to it by Congress to carry out complex broadcast television spectrum incentive auctions.¹ In initial comments, NHMC offered recommendations to guide the Commission through a number of issues likely to arise during the implementation of the incentive auctions.² Notably, NHMC stressed that the Commission must explore and address the needs of communities of color every step of the way. Some recommendations include creating a transparent reverse auction process to ensure that diverse owners are able to make informed participation decisions, collecting and analyzing ownership information from exiting broadcasters, developing ways to stimulate competition and diverse ownership in the forward auction, and minimizing the burdens that remaining broadcasters and the viewing public will have to bear due to the repacking of the broadcast band.

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Notice of Proposed Rulemaking, (rel. Oct. 2, 2012) (“NPRM”); *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (“Spectrum Act”).

² Comments of the National Hispanic Media Coalition, Docket No. 12-268 (filed Jan. 25, 2013) (“NHMC Comments”). NHMC also signed onto initial comments prepared by the Leadership Conference for Civil & Human Rights and the Public Interest Spectrum Coalition.

A wide range of commenters shared many of NHMC's opinions. In these reply comments, NHMC will supplement its initial comments by reiterating certain points and highlighting some areas of agreement with other parties. Specifically, NHMC will stress the importance of collecting and releasing ownership data from exiting broadcasters in a manner consistent with other Commission data collections and highlight the challenges of the repacking and transition process for remaining broadcasters and Latino television viewers.

I. The Commission Must Continue Its Ongoing Examination Of Broadcast Ownership Diversity By Collecting And Analyzing Ownership Data From Broadcasters Who Participate Successfully In The Reverse Auction And Exit The Market.

In its initial comments, NHMC highlighted that the implementation of the reverse auction could lead to a substantial decline in the already meager number of diverse owners of broadcast television stations.³ While it did not contemplate or advocate for placing restrictions on participation of diverse owners, NHMC underscored the close relationship between this proceeding and the Commission's Quadrennial Regulatory Review of media ownership rules. NHMC stressed that the Commission must collect and analyze ownership data about participating broadcasters – particularly winning bidders that choose to fully relinquish their spectrum and exit the market. NHMC emphasized that this data must be collected in a manner consistent with other Commission broadcast ownership data collections such as Form 323 and Form 323-E. By establishing additional, consistent data points, the Commission will be able to perform trend analysis that has, thus far, proven elusive.⁴ This type of analysis, if combined with

³ NHMC Comments at 3-7.

⁴ *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 09-182, 07-294, Report on Ownership of Commercial Broadcast Stations at 2 (rel. Nov. 14, 2012) ("2012 Ownership Report").

future data collections, studies, and reports on broadcast ownership diversity to be undertaken by the Commission, will be vital to future Quadrennial Reviews.

Other commenters agreed that there is a need for the Commission to collect and release data on participation of diverse owners in the reverse auction. In particular, NHMC agrees wholeheartedly with comments filed by the Leadership Conference for Civil & Human Rights (“Leadership Conference”), a coalition that includes many of the largest and most influential civil rights organizations in the country.⁵ Specifically, the Leadership Conference urges the Commission to “conduct an analysis of the current distribution of wireless spectrum among firms controlled by women and people of color, collect ownership data from auction participants choosing to completely relinquish their spectrum rights, and issue a report containing this data as soon as practicable” so that the Commission will not be caught “flat-footed” if many diverse broadcasters exit the market.⁶ NHMC fully agrees that such a result would “necessitate swift action from the Commission to determine whether the changing market demands a significant ramp up of Commission efforts to satisfy its statutory mandate to develop rules and programs to ‘promote’ broadcast ownership diversity.”⁷

II. The Commission Must Design The Repacking And Transition Process In A Way That Minimizes Burdens And Service Disruptions For Viewers And Remaining Broadcasters.

⁵ Comments of the Leadership Conference for Civil & Human Rights, Docket No. 12-268 (filed Jan. 25, 2013) (“Leadership Conference Comments”). NHMC is a member of the Leadership Conference and joined these comments along with a number of other member organizations including: the American Civil Liberties Union; Asian American Justice Center, member of Asian American Center for Advancing Justice; Common Cause; The Leadership Conference on Civil and Human Rights; National Organization for Women Foundation; National Urban League; NAACP; and United Church of Christ, Office of Communication, Inc.

⁶ Leadership Conference Comments at 5 (internal citation omitted).

⁷ *Id.*

NHMC also examined a number of concerns about the repacking process and the transition of broadcasters to new channel assignments. If not handled correctly, these processes could have a significant, negative impact on the viewing public and on broadcasters with no desire to discontinue service to their communities – including owners of low power television stations and the people that they serve.

A number of other commenters recognized the potential, negative impact that the repacking and could have on television viewers, and Latinos in particular. Like NHMC, Univision submitted comments that revealed Latinos’ disproportionate reliance on over-the-air television (“OTA”) – and the disproportionate harm that our community would face in the event of any disruption of service.⁸ The comments of the National Association of Broadcasters also highlighted a number of important points about “mitigating consumer disruption” that the Commission should fully consider.⁹ Fortunately, there are steps that the Commission can take to mitigate such disruption.

First, the Commission should attempt to mitigate any consumer disruption that could be caused by the process itself. To that end, the Commission should heed the recommendations of a number of commenters and take steps to ensure that a broadcaster’s coverage area and population served is not needlessly diminished should that broadcaster choose not to participate in the reverse auction.¹⁰ It is often the viewers that reside at the edge of a broadcaster’s range that most heavily rely on the service and even seemingly insignificant changes in coverage area could yield devastating consequences. Further, the ability to serve a population of a certain size factors

⁸ Comments of Univision Communications Inc. at 3-5, Docket No. 12-268 (filed Jan. 25, 2013) (“Univision Comments”).

⁹ Comments of the National Association of Broadcasters at 7-10, Docket No. 12-268 (filed Jan. 25, 2013) (“NAB Comments”).

¹⁰ *See Id.*

into a station's ability to create revenue and diminishing the size of a station's audience could destabilize a station's financial well-being.¹¹ This could be particularly problematic for stations already experiencing some amount of financial distress, like many stations owned by people of color.¹²

Second, the Commission should mitigate any consumer disruption caused by lack of consumer understanding of the process. One tried and tested way to mitigate this type of disruption is for the Commission to devote significant resources to public outreach and education, as the Commission did during the digital television ("DTV") transition. This outreach should be robust and it should start as soon as practicable. NHMC agrees with the Corporation for Public Broadcasting and others that, if necessary, the Commission should seek additional funds from Congress to complete this outreach.¹³ And, as noted in NHMC's initial filing, the Commission should not take this transition for granted and it should engage multiple stakeholders so that all communities across the country are well informed.

Finally, the Commission should fully consider the consequences of its proposed treatment of low power television stations ("LPTV") and translators. NHMC agrees with the Commission's assessment of the role of LPTV stations and believes that they provide unique service to their communities and offer an entry point for diverse broadcasters.¹⁴ Other commenters expanded on this view. Entravision, for instance, discussed the important role that its LPTV stations play in its service of culturally relevant programming to the Latino

¹¹ *Id.* at 27.

¹² *See* Comments of Free Press at 17-23, MB Docket Nos. 09-182, 07-294 (filed Dec. 21, 2012).

¹³ Comments of the Association of Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service at 30, Docket No. 12-268 (filed Jan. 25, 2013) ("PTV Comments").

¹⁴ NHMC Comments at 4-5.

community.¹⁵ However, given that LPTV stations only receive “secondary interference protection” under the Commission’s rules,¹⁶ many may be forced to relocate at considerable expense or discontinue operations completely. NHMC recognizes that the same can be said for translator facilities, which are used to expand the reach of broadcast signals to distant areas. Many groups have submitted materials to the record describing the use of translators to serve rural communities and communities of color.¹⁷ Often, these facilities are the most effective way to deliver essential information to underserved areas and the loss of a significant number of these outlets and facilities would be devastating. The Commission should strive to protect as many of these stations as possible, especially if they serve the critical information needs of an underserved community.

CONCLUSION

Wherefore, NHMC respectfully requests that the Commission accept the recommendations herein.

Respectfully Submitted,

/s/

Michael J. Scurato, Esq.
Jessica J. González, Esq.
National Hispanic Media Coalition
55 South Grand Avenue
Pasadena, CA 91105
(626) 792-6462

March 12, 2013

¹⁵ Comments of Entravision Holdings, LLC at 14, Docket No. 12-268 (filed Jan. 25, 2013) (“Entravision Comments”).

¹⁶ *See, e.g.*, 47 C.F.R. § 74.703(b).

¹⁷ *See* PTV Comments; Ex Parte Communication of the Colorado Broadcasters Association, Docket No. 12-268 (filed March 7, 2013).